

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 17.30.502, 17.30.619,)	
17.30.702, 17.30.715,)	
17.30.1001, 17.30.1006 and)	(WATER QUALITY)
17.30.1007 pertaining to)	
definitions, incorporation by)	
reference, criteria for)	
determining nonsignificant)	
changes in water quality,)	
standards for ground water and)	
sample collection,)	
preservation and analysis)	
methods)	

TO: All Concerned Persons

1. On October 17, 2002, the Board of Environmental Review published MAR Notice No. 17-173 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2713, 2002 Montana Administrative Register, issue number 19.

2. The Board has amended the rules exactly as proposed.

3. The following comments were received and appear with the Board's responses:

COMMENT NO 1: Comments were received from Bayer Crop Science, Montana Agricultural Business Association and Montana Department of Agriculture in support of the proposed standards for Bromoxynil.

RESPONSE: The Board acknowledges the comment and is adopting the amendments as originally proposed to ARM 17.30.502, 17.30.619, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006 and 17.30.1007 to update the incorporations by reference of Department Circular WQB-7 as originally proposed.

COMMENT NO. 2: A comment was received stating that the proposed amendments to Department Circular WQB-7 were not made available during the comment period. The commentor recommended re-noticing the rule amendments.

RESPONSE: While the Board acknowledges the difficulties this commentor experienced attempting to obtain a copy of the revised Department Circular WQB-7, the Board declines to re-

notice the rules given that the rules were properly noticed in accordance with the Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, MCA, and Montana's Water Quality Act, Title 75, Chapter 5, MCA.

Pursuant to these laws, notice of the rulemaking was published in the Montana Administrative Register (MAR) and legal notices were published in seven newspapers throughout the state. In addition, notices were mailed to approximately 250 interested persons on the Board's mailing list, as well as 841 interested persons on the Department's mailing list for amendments to WQB-7. For this particular rulemaking, additional mailings were made to agricultural chemical distributors (approximately 400 additional mailings) and a news release was made through the Montana State University Extension Service pesticide education specialist. In the legal notices and mailings to the Department's interested persons mailing list, the name, address, phone number, and E-mail address of the primary contact person from the Department was provided. Despite the wide distribution of notices for this rulemaking, the difficulties encountered by this commentor arise from the fact that the actual amendment to WQB-7 was not published in the MAR.

Under 2-4-307, MCA, an agency may adopt by reference any material or publication that would be too cumbersome or too expensive to publish in the MAR. Since Department Circular WQB-7 falls into the category of being lengthy and therefore expensive to publish, the Board's policy has been to simply incorporate the document by reference. Given the problems noted by the commentor in obtaining an actual copy of the revised WQB-7, the Board will modify its procedures for providing notice of changes to WQB-7. For future modifications to WQB-7, the Board will include in the MAR Notice the name, phone number, and E-mail address of the contact person from the Department and will make the amended Circular available on the Department website, with a link to the MAR Notice. These changes should improve access to documents that are not published in the MAR.

BOARD OF ENVIRONMENTAL REVIEW

By:

JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, _____, 2002.